IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No 137 of 2002

Date of Decision: April 18, 2006.

Smt. Phula Devi …Appellant.

Versus.

HRTC & ors. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. C.B.Singh, Advocate.**

For the Respondent(s): **Mr. Ashok Sharma, Advocate.**

Deepak Gupta, J.

This appeal discloses a shocking state of affairs showing the casual approach of both, the learned Motor Accident Claims Tribunal as well as the learned counsel handling the matter.

Dewan Chand who was working as a J.B.T. teacher in Government Primary School, Shanoor, admittedly died in an accident of bus bearing registration No.HP 34-6379 owned by the H.R.T.C. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) being claim petition No.36 of 2000 was filed by his widow Phula Devi and mother Hari Dassi before the Motor Accident Claims Tribunal, Kullu on 23.6.2000.

The HRTC filed reply to the claim petition. Issues in the matter were framed on 22.12.2000. On 17.3.2001, the matter was placed before the Lok Adalat which suggested that the matter be compromised for Rs.5 lacs and adjourned the case to 21.4.2000. On 21.4.2001, the HRTC did not accept the suggestion of the Lok Adalat for compromising the matter for Rs. 5 lacs. The matter was thereafter listed on 21.6.2001 for evidence of the petitioners. On 21.6.2001, both the petitioners were present. Petitioner Phula Devi stated that she has filed a separate petition and does not want to proceed with the earlier petition. Her name was ordered to be struck off from the record. The order of the Motor Accident Claims Tribunal dated 21.6.2001 reads as follows:-

> "21.6.2001. Present: Both petitioners in person with Sh Rajesh Rashpa, Advocate.
>
> Sh S.K.Khanna ld. counsel for respondent No.1.
>
> Sh Baljit Dogra ld. counsel for respondent No.2.
>
> Petitioner Phul Dei stated that she has filed a separate petition so does not want to proceed with the petition. Her statement recorded. Consequently her name struck off from the record.
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> Reply to application U/s 140 M.V.A. filed. 5 PWs recorded. Petitioner closed evidence. For evidence of respondent to come up on 21.7.2001.
>
> Sd/- MACT Kullu."

This order was totally erroneous and shows total lack of application of mind on behalf of the Tribunal as well as the counsel.

A petition under Section 166 of the Motor Vehicles Act is always treated as a petition filed in a representative capacity and enures for the benefit of all the dependants. Indeed under the provisions of the Motor Vehicles Act, 1988, a duty is cast upon the Motor Accident Claims Tribunals to ensure that the compensation is paid to all the claimants. Under Section 158(6) of the Act, a police official who records an FIR with regard to a Motor Vehicle Accident, is duty bound to forward a copy of the said FIR to the Motor Accident Claims Tribunal within 30 days of the lodging of the report.

Section 166(4) of the Motor Vehicles Act reads as follows:-

> "The claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

From a perusal of the aforesaid provision, it is clear that even if the report of the accident is forwarded to the Tribunal, it is duty bound to treat this report as an application for compensation. Obviously, the Tribunal has to treat this report as an application for compensation on behalf of all the dependants. In the present case, both the mother and widow had filed the claim petition. None of them could have been permitted to withdraw from the said claim petition with permission to file a separate petition. If there was any conflict between them, this could have been resolved by engaging separate counsel. However, the Motor Accident Claims Tribunal should not have permitted the widow to withdraw from the petition filed with liberty to file a separate petition.

The best course would have been to permit the parties to continue with the earlier petition. In my opinion, two separate petitions with regard to the death of one person cannot be filed.

The fact, however, remains that a separate petition was filed and the widow Phula Devi was permitted to withdraw from the earlier petition. The second petition was filed by the widow on 29.5.2001. The mother-in-law was shown as respondent No.4 in this petition. This petition was also filed before the Motor Accident Claims Tribunal, Kullu. In the present case, once the Tribunal was aware that the wife wanted to withdraw from the earlier petition since she had filed the second petition, it was the duty of the Tribunal to have ensured that both the petitions are at least heard together so that conflicting awards are avoided. This also was not done by the Tribunal. Both the petitions proceeded separately with nobody making any efforts to have the same consolidated or at least tried together.

In the second petition filed by the wife, issues were framed on 4.10.2001 of which Issue No.3 reads as follows:-

> "Whether petitioner is estopped from filing present petition as has already filed another petition for compensation and consequently this petition is not maintainable? OPR"

Despite this issue having been framed also neither the Tribunal nor the parties took any steps to have both the petitions consolidated or heard together. The earlier petition filed on behalf of the mother, was disposed of by the Tribunal on 1.11.2001. The Tribunal awarded a sum

of Rs. 80,000/- to the mother. The income of the deceased was assessed at Rs.8055/- and the carry home salary at Rs.7000/-. After deducting Rs.2400/- for the amount being spent by the deceased on himself, the dependency of the family was assessed at Rs.4600/-. Since the mother was aged 64 years, multiplier of seven only was applied and the total compensation was assessed at Rs.3,86,400/-. Out of this, Rs.80,000/- was awarded to the mother and balance held to be the share of the widow. In my opinion, this was not proper since the widow was not a party and if the multiplier had been applied keeping in view both the age of the mother and the widow, the same would have been much higher and the awarded amount would also have been higher.

The second petition filed by the wife was finally disposed of by the impugned award dated 21.3.2002. The learned Tribunal again applying the same formula assessed the dependency of the family at Rs.55000/- per annum and applying the multiplier of 7, the compensation was assessed at Rs.3,86,400/-. Since 80,000/- had been paid to the mother a sum of Rs.3,06,400/- was awarded to the widow. However, the Tribunal has virtually not decided issue No.3 and just stated that it was redundant in view of the fact that the petitioner had withdrawn the earlier petition. More need not be said with regard to the manner in which the petition was disposed of. The deceased was only 28 years old and the widow was aged only 27 years. The Tribunal was not at all justified in applying the multiplier of seven only.

As discussed hereinabove, the second petition, strictly speaking was not maintainable. However, the HRTC has not filed any appeal against the same. I also find that the widow was not at all at fault. The fault lies squarely with the counsel and the Tribunal. The parties are not well versed in law and it is only their counsel who have to guide them properly. In case, the compensation had been assessed properly, the widow would have got a much bigger amount and and similarly the mother would have also got the larger amount. It is a duty cast upon the Tribunal as well as this Court under the Act to see that just compensation is awarded to the claimants and they are not denied their rightful claim on account of some technicality. Therefore, I proceed to determine the compensation payable to the widow.

In the present case, the deceased as observed above, was earning Rs. 8000/- per month. After making deductions for income tax and certain allowances which were personal to the deceased, his net income could be said to be Rs.7000/- per month. The dependency of the widow would be approximately Rs.2333/- per month or Rs.28000/- per year. Keeping in view the age of the widow of the deceased, the proper multiplier in my opinion, would be 16 and the compensation payable to the widow alone for loss of dependency would be Rs.4,48,000/-. In addition thereto, the widow would be entitled to Rs.10,000/- for loss of consortium and Rs.10,000/- for conventional and funeral charges. The total compensation works to Rs.4,68,000/-.

In view of the aforesaid discussion, the appeal is allowed, the impugned award passed by the learned Tribunal dated 21.3.2002 is modified and the amount of compensation is enhanced from Rs.3,06,400/- to Rs. 4,68,000/-. The claimant shall also be entitled to interest on this amount at the rate of 7-1/2% per annum w.e.f. 29.5.2001 the date of institution of the claim petition till payment/deposit of the amount. No costs.

April 18, 2006. (Deepak Gupta), J.
s.